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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 AMERICAN ECONOMY INSURANCE
12 COMPANY, an Indiana corporation,
13 Plaintiff,

14 v.

15 NICEFORO HERRERA, individually and
16 doing business as ACAPULCO'S PRODUCE
17 MARKET; NICHOLAS M. FINTZELBERG
18 doing business as MILNIK TRUST
19 PROPERTIES; LUIS BENITEZ; and
20 JOHANNA BENITEZ, by and through her
21 guardian at litem, Luis Benitez,

22 Defendants.

Civil No. 06cv2395 WQH (CAB)

**ORDER FOLLOWING MANDATORY
SETTLEMENT CONFERENCE**

23 On January 16, 2008, the Court held a Mandatory Settlement Conference. Greg Thorton
24 appeared on behalf of Plaintiff American Economy Insurance Company ("American Economy")
25 with counsel Scott Murch, Esq. Defendant Nicholas Fintzelberg appeared with his counsel Seth
26 Friedman, Esq., and Robert Steiner, Esq. Defendant Luis Herrera appeared with his counsel,
27 William Baker, Esq. Defendant Luis Benitez, *pro se*, failed to appear on his own behalf and as
28 guardian ad litem for Defendant Johanna Benitez.

29 The parties who were present resolved the matter on the following terms. Plaintiff
30 American Economy will dismiss its claim with prejudice against Defendant Fintzelberg, doing
31 business as Milnik Trust Properties, in exchange for a waiver of costs and fees. Defendant

1 Fintzelberg further agreed not to pursue any claims against American Economy for bad faith,
2 malicious prosecution, abuse of process, or similar such claim, arising from the filing of this
3 action.

4 Plaintiff American Economy and Defendant Herrera will submit a joint motion for a
5 consent judgment of rescission.

6 Accordingly, the Court finds good cause to VACATE the Scheduling Order.

7 The Court shall hold a telephonic status conference with Plaintiff and Defendant Benitez on
8 **March 14, 2008**, at **9:30 a.m.**, to address disposition of the remainder of this matter. Counsel for
9 Plaintiff shall coordinate and initiate the call.

10 As to Plaintiff American Economy and Defendant Fintzelberg, IT IS HEREBY
11 ORDERED:

- 12 1. A Joint Motion for Dismissal shall be electronically filed on or before **February 28,**
13 **2008**.¹ On the same day the Joint Motion for Dismissal is filed, the proposed order
14 for dismissal, for the signature of the Honorable William Q. Hayes, shall be emailed
15 to the chambers of the Honorable Cathy Ann Bencivengo.²
- 16 2. If a Joint Motion for Dismissal and proposed order for dismissal are not submitted
17 on or before February 28, 2008, then a Settlement Disposition Conference shall be
18 held on **February 29, 2008**, at **9:30 a.m.** before Judge Bencivengo. The conference
19 shall be telephonic, with attorneys only. Counsel for Plaintiff shall initiate and
20 coordinate the conference call.

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26 ¹ See General Order 556, Electronic Case Filing Administrative Policies and Procedures
27 Manual, United States District Court for the Southern District of California.

28 ² See *id.* at 13-14, for the chambers' official email address and procedures on emailing
proposed orders.

